

United States Senate

WASHINGTON, DC 20510

December 9, 2019

Via Electronic Submission System

The Honorable Charles P. Rettig
Commissioner, Internal Revenue Service
U.S. Department of the Treasury
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comment on IRS Reg-102508-16: “Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations”

Dear Commissioner Rettig,

We write to express significant concern regarding this proposed rule because it will further enable dark money interests to distort our democracy by repealing the requirement that certain tax-exempt organizations identify the names of donors who contribute significant sums of money. Americans have a right to know who is paying to influence our democracy. Rolling back transparency standards is wrong and it undermines our political system, which rests on the idea that each voter has an equal say in our democracy. As foreign adversaries ramp up their efforts to target our elections and look for new ways to influence our democracy, we need stronger rules for transparency and accountability in campaign finance, not weaker ones. For these reasons, and the issues discussed below, we strongly urge you to reject the proposed rule.

We Must Strengthen Transparency Instead of Weakening It

For decades, the IRS and the Treasury Department have required 501(c)(4) groups that engage in issue advocacy to identify, confidentially, the names of individual donors who make financial contributions of \$5,000 or more during a taxable year to their organization on Schedule B of Form 990. The IRS has proposed rolling back this rule change because it wants “to balance the IRS’s need for the information against the costs and risks associated with reporting on the information.”¹ This rationale is not persuasive and courts have rejected it. Notwithstanding Justice Scalia’s argument that “requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed,”² schedule B forms are often not made public—even though, as the Ninth Circuit has said, any risk of accidental disclosure is “small” and that disclosure has not shown to “actually and meaningfully deter contributors.”³ The Campaign Legal Center’s comment to this rulemaking reinforces this point and notes that the risk of accidental disclosure is exceptionally small because the IRS has taken steps at preventing accidental disclosure.⁴

¹ IRS, Guidance Under section 6033 Regarding the Reporting Requirements of Exempt Organizations.

² Doe v. Reed, 561 U.S. 186, 228 (2010).

³ Americans for Prosperity Foundation v. Becerra, 903 F.3d 1000, 1014, 1019 (9th Cir. 2018).

⁴ Campaign Legal Center, Comments on IRS Reg-102508-16: “Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations.”

And as Governor Bullock notes in the comment he submitted opposing the rule, the benefits of disclosure far outweigh any “cost” because this type of disclosure is an important tool for state and federal law enforcement officials to enforce campaign finance laws, especially the ban on foreign contributions.

Changing the Rule Makes it Easier for Foreign Adversaries to Influence Our Elections

One of the most important reasons that disclosure is critical is to uphold the ban on foreign contributions. Federal law prohibits foreign nationals from influencing our elections. Despite this prohibition, foreign adversaries are working to undermine our democracy by exploiting our lack of transparency regulations. These foreign actors attempt to influence our elections through various methods, including the use of the internet, dark money groups, and foreign-owned corporations.⁵ The IRS’s proposed rule makes it easier for adversaries to contribute unlimited sums of money to influence our democracy at a time when our elections are at a heightened risk.

Top law enforcement and military officials continue to warn that our elections are a target. Last year, the Office of the Director of National Intelligence (ODNI), the Department of Justice (DOJ), the Federal Bureau of Investigation (FBI), and the Department of Homeland Security (DHS) issued a joint statement of concern about “ongoing campaigns” by foreign actors, including Russia, China, and Iran, to “undermine confidence in democratic institutions.”⁶ As recently as two months ago, the Department of Justice indicted Lev Parnas and Igor Fruman for attempting “to circumvent the federal laws against foreign influence by engaging in a scheme to funnel foreign money to candidates for federal and state office so that the defendants could buy potential influence with the candidates, campaigns, and the candidates’ governments.”⁷ Other investigations over the last two years have revealed numerous and significant attempts to influence the 2016 elections by skirting campaign finance disclosure rules.⁸

The IRS’ proposed change would shield foreign actors who donate millions of dollars to issue organizations from state and federal regulators.

Dark Money Poses a Threat to Americans’ Political Rights

The opening of the dark money floodgates after *Citizen’s United* coupled with emboldened efforts by foreign adversaries to influence our elections have weakened Americans’ faith in our political process. One of the best ways to restore trust in government is to ensure we have meaningful transparency – that means we need stronger campaign finance laws.

At its core, the IRS’s proposed rule strengthens private interests and the prevalence of dark money at the expense of the American people, and it does so at a time when there has been a significant increase in dark money expenditures. A recent report from the Center for Responsive

⁵ Ian Vandewalker and Lawrence Norden, *Getting Foreign Funds Out of America’s Elections*, Brennan Center (April 6, 2018), <https://www.brennancenter.org/our-work/policy-solutions/getting-foreign-funds-out-americas-elections>.

⁶ Joint Statement from the ODNI, DOJ, FBI, and DHS: *Combating Foreign Influence in U.S. Elections*, (Oct. 19, 2018), <https://www.dni.gov/index.php/newsroom/press-releases/item/1915-joint-statement-from-the-odni-doj-fbi-and-dhs-combating-foreign-influence-in-u-s-elections>

⁷ *United States of America v. Lev Parnas, Igor Fruman, David Correia, Andrey Kukushkin*, 19 Cr. 725 (S.D.N.Y.).

⁸ Diana Pilipenko and Talia Dessel, *Following the Money: Trump and Russia-Linked Transactions From the Campaign to the Presidential Inauguration*, Center for American Progress (Dec. 17, 2018), <https://www.americanprogress.org/issues/democracy/reports/2018/12/17/464235/following-the-money/>.

Politics reveals that in the last decade more than \$2 billion dollars has been spent by groups that do not fully disclose their donors.⁹ Experts warn that this is only a small fraction of the actual amount of undisclosed money that flows into our political system.

Dark money flows through the very same organizations implicated under this proposed rule. Experts have warned that corrupting forces have taken advantage of the fact that 501(c)(4) groups – also known as issue advocacy or social welfare organizations – are not required to disclose all of their donors. Super PACs, organizations that are required to disclose their donors, have found a loophole in the law that allows them to accept money from secret donors by taking in unlimited contributions from political non-profits, like 501(c)(4) groups.¹⁰ This is an unacceptable workaround to laws that require transparency, and instead of closing the loophole the proposed rule widens it.

Dark money interests are increasingly pushing for policies and outcomes – in secret. The examples below represent a small fraction of the issues being influenced by dark money.

Climate Change - Dark money groups have poured money into state legislatures with the goal of affecting policy outcomes related to the environment. For example, just last month, several dark money groups contributed tens of thousands of dollars in Ohio to oppose an energy referendum that would help combat climate change.¹¹ Outside of state legislatures, dark money groups have continuously funded climate change denial efforts.¹² One study found that a large portion of the money behind organizations that deny global warming are funneled through dark money groups.¹³

Combating Gun Violence - Another example of dark money's influence on our political system includes efforts to combat gun violence. During the 2016 election, the NRA spent close to \$70 million on advertisements opposing gun safety measures and promoting guns. Most of this funding came through the NRA's 501(c)(4) organization that does not have to disclose its donors.¹⁴

Both Congress and executive agencies like the IRS should be focused on exploring ways to increase transparency in our political system. Instead of engaging in rule-making to increase the amount of dark money in our system, the IRS should require political nonprofits to record all of

⁹ Anna Massoglia, *State of Money in Politics: Billion-dollar 'dark money' spending is just the tip of the iceberg*, Center for Responsive Politics (Feb. 21, 2019), <https://www.opensecrets.org/news/2019/02/somp3-billion-dollar-dark-money-tip-of-the-iceberg/>.

¹⁰ Dark Money Basics, <https://www.opensecrets.org/dark-money/basics>.

¹¹ Rebecca Leber, *Dark Money Is Pouring in to Protect the "Worst Energy Policy in the Country"*, Mother Jones (Oct. 10, 2019), <https://www.motherjones.com/environment/2019/10/dark-money-is-pouring-in-to-protect-the-worst-energy-policy-in-the-country/> (In response, the law's supporters have waged an unprecedented "all-out deceptive effort to prevent the issue from getting on the ballot").

¹² Douglas Fischer, *"Dark Money" Funds Climate Change Denial Effort*, Scientific American (Dec. 23, 2013), <https://www.scientificamerican.com/article/dark-money-funds-climate-change-denial-effort/>.

¹³ *Id.*

¹⁴ Peter Stone, *NRA spent more than reported during 2016 election*, McClatchyDC (Oct. 5, 2017), <https://www.mcclatchydc.com/news/politics-government/article177312006.html>.

their donors over \$5000 and share that information with the public.¹⁵ Congress is working on proposals to increase transparency and accountability in our campaign finance system. This year, the House of Representatives passed the *For the People Act*, legislation that would help end dark money's influence on our elections. Additionally, members of both the House and the Senate have introduced dozens of bills to increase transparency through heightened disclosure requirements and strengthen oversight over our elections by creating new rules for Super PACs and strengthening the Federal Election Commission.¹⁶

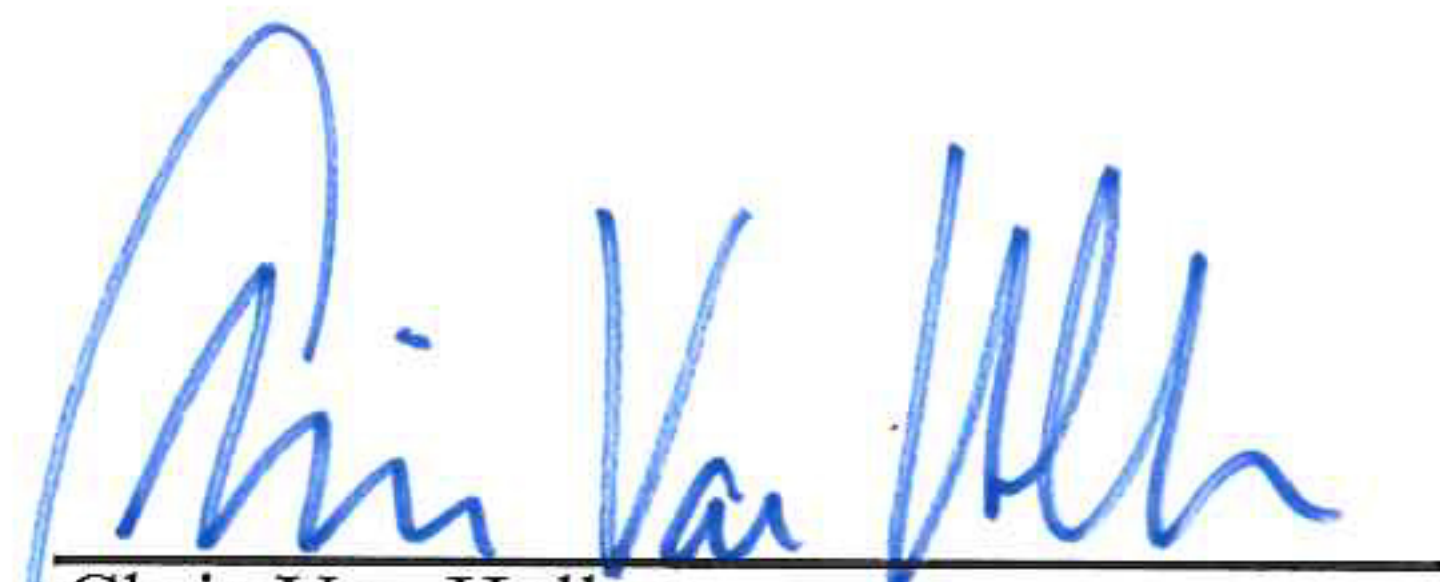
Judges - According to the Brennan Center, wealthy interests seeking to influence the makeup of our courts are increasingly turning to outside spending by groups. 38 states hold elections for their high courts, and between 2015-2016, super PACs, social welfare organizations, and other groups spent a record \$27.8 million to influence those elections, which accounted for 40 percent of all state supreme court election spending.¹⁷ Only 18 percent of the money spent in 2015-2016 could be easily traced to specific donors; the majority of the money came from undisclosed donors. In addition to blocking voters from having important information about the interests influencing state judicial systems, these secret donations represent a conflict of interest. Researchers who have been able to trace some of the money have tied some of it to individuals who have cases pending before the courts.¹⁸ Dark money interests are not only targeting state courts, they are attempting to influence the Supreme Court as well. In a recent article, Senator Whitehouse highlights the alarming fact that one wealthy anonymous donor gave \$17 million to groups to help oppose Judge Merrick Garland and another \$17 million to help confirm Justice Kavanaugh, all in undisclosed, dark money spending. Senator Whitehouse rightly notes that the "dark money network applies its influence at all levels of the judiciary and all phases of the process."¹⁹

We need to restore Americans' confidence in our political system – which means making it harder for dark money special interests and foreign actors to exploit loopholes at the expense of the American people. Accordingly, we strongly urge you to reject this proposed rule.

Sincerely,



Amy Klobuchar
United States Senator


Chris Van Hollen
United States Senator

¹⁵ Ciara Torres-Spelliscy, Dark Money Loses a Round, Brennan Center (Aug. 7, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/dark-money-loses-round>.

¹⁶ H.R. 1, the For the People Act, <https://sarbanc.house.gov/issues/hr-1-the-for-the-people-act>.

¹⁷ Alicia Bannon, *The Rise of Dark Money Is a Threat to Judicial Independence*, Brennan Center (July 6, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/rise-dark-money-threat-judicial-independence>.

¹⁸ *Id.*

¹⁹ Sheldon Whitehouse, With Supreme Court Mired in Dark Money, Time for Large Dose of Transparency, Just Security (Dec. 4, 2019), <https://www.justsecurity.org/67591/with-supreme-court-mired-in-dark-money-time-for-large-dose-of-transparency/>.


Dianne Feinstein
United States Senator


Kirsten Gillibrand
United States Senator


Tammy Duckworth
United States Senator



Richard J. Durbin
United States Senator


Bernard Sanders
United States Senator


Elizabeth Warren
United States Senator


Richard Blumenthal
United States Senator


Mazie K. Hirono
United States Senator



Sherrod Brown
United States Senator


Tina Smith
United States Senator


Edward J. Markey
United States Senator


Jack Reed
United States Senator


Tom Udall
United States Senator


Cory A. Booker
United States Senator